

The Aegean Sea dispute on the edge of escalating

Mapping the legal options between Greece and Turkey

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The feud between Greece and Turkey in the Aegean Sea counts several decades but has lately sparked international concerns about the region's peace and stability. On 27 November 2019, the Turkish government and the Prime Minister of the Government of National Accord of Libya signed a [Memorandum of Understanding](#) for the delimitation of the maritime area between Turkey and Libya. The agreement was [condemned](#) by Greece and other countries, for disregarding the island of Crete and its respective maritime zones in the South Mediterranean. On 6 August 2020, Greece and Egypt signed an [agreement for the partial delimitation](#) of their Exclusive Economic Zones (EEZs). Turkey declared this agreement '[null and void](#)'. Almost immediately, it dispatched a [research vessel](#) (*Oruç Reis*) for the conduct of seismic surveys between the Greek islands of Rhodes and Kastelorizo. A Turkish warship escorting *Oruç Reis* [collided](#) with the Greek frigate *Limnos*. EU member States called Turkey to de-escalate tensions in the region or face [sanctions](#). Turkey defied the ultimatum, [threatening Greece with war](#). This article presents the main features of the maritime dispute between Greece and Turkey and examines whether the options which international law offers can successfully soothe tension.

What is at stake?

The Aegean Sea maritime dispute is complex and comprises three main issues: the breadth of the territorial sea; the presence of islands; and the delimitation of the continental shelves between the two States.

Since 1936, Greece has claimed a 6 nautical-mile (nm) territorial sea. Turkey also claims a 6-nm territorial sea in the Aegean. However, the United Nations Convention on the Law of the Sea 1982 (UNCLOS) allows States to extend their territorial sea up to 12 nm from the shore. Greece has adopted the Convention but Turkey has not, holding different approaches in different regions. Although Turkey claims a 12-nm territorial sea in the Black Sea and parts of the Mediterranean, it argues that the expansion of the Greek territorial sea to 12 nm constitutes *casus belli* as it would [disproportionally affect Turkey's interests](#) in the eastern Aegean. Notwithstanding Turkey's arguments against the application of UNCLOS, most provisions of the Convention (including the above) are part of customary law, binding all States. Besides, the use of force by Turkey would breach [Article 2.4 of the UN Charter](#).

With regards to islands, Greece supports that islands which can sustain life generate their own continental shelf and EEZ as per Article 121 of UNCLOS, which

constitutes customary law (see [Nicaragua v Colombia](#), ICJ 2012, para 139). Turkey, on the contrary, supports that islands can only generate a territorial sea (but not an EEZ or continental shelf) denying a significant part of Greek jurisdiction in the Aegean.

The delimitation of the continental shelf between the two countries is also a complex issue. Under conventional (Article 2 of the Convention on the Continental Shelf 1958; Articles 76 and 77 UNCLOS) and customary law (see [North Sea Continental Shelf Cases](#), ICJ 1969 paras 19 and 39), every coastal State is *ipso facto* entitled to that part of the seabed and subsoil which extends from the land. Within this zone, States possess sovereign rights for the exploration of natural resources, such as hydrocarbons. When the continental shelves of two countries overlap, an international boundary shall be established with the process of delimitation. UNCLOS does not provide a specific delimitation method for this zone. Yet, both conventional and customary law require that the delimitation outcome is equitable. International jurisprudence has consistently applied a three step delimitation approach, which comprises: i) the establishment of a provisional median line, which is equally distant from each coast, ii) the consideration of any relevant circumstances that would justify adjustment of this line, and iii) the performance of a disproportionality test to ensure that each State receives a maritime space that is proportional to its coastal length. Greece favours the median line, in compliance with the jurisprudential position. It also maintains that the calculation of the continental shelf begins from its islands. Turkey, on the other hand, supports the method of equitable principles (according to which delimitation is subject to various relevant factors) and maintains that the continental shelf can only be measured from the mainland.

Previous settlement attempts

The tension in the Aegean has gone through several stages. This includes diplomatic settlement attempts but also hostile exchanges. A crucial time was in the 1970s, when the Turkish government authorised its national petroleum company to perform unilateral seismic surveys in the Eastern Aegean. In 1976, Greece instituted judicial [proceedings](#) against Turkey. It requested the ICJ to declare that the Greek islands in the area were entitled to their lawful portion of continental shelf and to delimit the respective parts of that shelf appertaining to Greece and Turkey. It also requested the prescription of interim measures which would prohibit unilateral operations in the region pending the delimitation judgment. Turkey refused to recognise the jurisdiction of the Court, which dismissed the case. In March 2002, the two parties launched a process of [confidential exploratory contacts](#), in order to identify the common ground and the conditions of negotiations that might lead to an agreement regarding their continental shelf claims. However, no agreement was reached between the parties.

What options under international law to soothe the tension in the Aegean Sea?

Delimitation is the optimal way to address a maritime dispute. It is based on a peaceful process and secures a final outcome. Also, the establishment of an

international boundary will clearly define which part of the seabed belongs to each State. This would ultimately facilitate the exploration of hydrocarbons in the area.

Yet, as things currently stand, a delimitation scenario would be unlikely for Greece and Turkey. Such exercise would be particularly difficult, as the legal parameters are controversial. Whether effected by an agreement between the concerned States or by a third body, delimitation should deal with the challenges identified in this article. The parties should agree on the subject matter of the dispute and the jurisdiction of the judicial body (should they resort to judicial delimitation), as well as on the method of delimitation and the factors which might affect the boundary's course. Also, it might be necessary that the Aegean is delimited in different sectors (North, Central, South, and East) as each contains different geographical features. Aside those matters, the most challenging issue is that the outcome of a prospective maritime delimitation in the Aegean Sea is equitable and acceptable by both parties.

Notwithstanding, other options can be employed by States as alternative to delimitation. For instance, a moratorium of petroleum operations can be agreed for a period of time. The halting of unilateral activities in the region would mitigate the existing tension and facilitate the parties' diplomatic communications. Yet, a moratorium might not be easily agreed for an area of such strategic location as the Aegean Sea, which may also be rich in hydrocarbons.

If Greece and Turkey are eager to explore and exploit the natural resources of the Aegean, they could instead enter into a Joint Development Agreement (JDA). This would allow parties to shelve their boundary or sovereignty differences and collaborate without prejudice to each other's claims for the common exploration and sharing of the region's natural wealth. The concept of State collaboration is well-established in international law. Under Articles 74(3) and 83(3) UNCLOS, States are obliged, 'in the spirit of understanding and cooperation (...) to make every effort to enter into provisional arrangements of a practical nature' pending delimitation of their EEZ and continental shelf. Such provisional arrangement is the JDA. Although States are not obliged to actually sign a JDA, failure to negotiate pending delimitation may qualify as breach of international law (see [Arbitration between Guyana and Suriname 2007](#)). This suggests that unilateral exploitation of hydrocarbons in the disputed parts of the Aegean should be avoided.

From a pragmatic perspective, however, a JDA between Greece and Turkey would be fraught with several difficulties. The conclusion of such agreement requires political will, good faith, and mutual concessions in the parties' original positions. Even if States are determined to reach the negotiation table, they must agree on numerous thorny issues. These include: the definition of the area of joint development, the legal and fiscal regime applicable therein, the companies which will receive permits along with the conditions of exploration, and of course, the amount of resources or revenues which each party will receive upon successful extraction.

Addressing political differences

International law offers various means which Greece and Turkey can employ in order to deal with the Aegean Sea dispute. The parties can establish an international

boundary via delimitation, agree on a moratorium of petroleum operations or enter into a JDA. However, reality often imposes obstacles which law cannot surmount. All options require good faith and a mutual spirit of compromise between the concerned parties. The protagonists of boundary disputes must first address their political differences before they consider their energy or economic needs. But while international law provides means to settle the conflict, it does not guide the way. States are not obliged to take specific measures, nor to exclude certain options. It is only clear that war – as threatened by Turkey – would not be permissible.

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